

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

ARCH CHEMICALS, INC.,
a Virginia corporation, and
LEXINGTON INSURANCE CO.,

No. 07-1339-HU

Plaintiffs

v.

OPINION AND ORDER

RADIATOR SPECIALTY COMPANY,
a North Carolina corporation,

Defendant.

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Joseph Rohner IV
Dennis N. Freed
Ryan J. McClellan
Smith Freed & Eberhard
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9 HUBEL, Magistrate Judge:

10 This is an action by Arch Chemicals, Inc. (Arch) and Lexington
Insurance Company (Lexington) against Radiator Specialty Company
11 (RSC), asserting claims for contribution and Lexington brings a
12 second claim for unjust enrichment. Arch and Lexington seek
13 recovery of amounts paid in settlement of a lawsuit against Arch
14 brought by members of the Davidson family. Before the court is
15 RSC's Motion to Strike Lexington's Complaint (doc. # 357). For
16 the reasons set forth below, I deny the motion.

17
18 **FACTS**

19 This case arises out of the wrongful death and bodily injury
claims brought by the Davidson family against Arch Chemicals. The
20 facts are summarized in multiple earlier opinions from the court
21 and will not be repeated here.

22 On April 20, 2004, the Davidson family brought a lawsuit
23 against Arch in Oregon state court alleging civil claims related to
24 the fire. The litigation was resolved by a confidential settlement
25 on December 7, 2006, which was jointly funded by Arch and
26 Lexington.

27 On September 7, 2007, Arch brought the instant lawsuit against
28

1 RSC, seeking contribution for RSC's role in causing the fire. On
2 June 30, 2009, on RSC's motion, Arch's insurer, Lexington, was
3 joined as a real party in interest. While that order was
4 reconsidered at the request of Arch, it was reaffirmed on September
5 25, 2009.

6 There was nothing filed by Lexington in this regard until
7 nearly a year later. On September 14, 2010, after RSC had filed
8 its motion for summary judgment, Lexington for the first time filed
9 its own complaint against RSC. Lexington's First Claim for Relief
10 was for contribution mirroring Arch's similar claim. Lexington's
11 second claim for relief was for unjust enrichment/restitution.
12 Arch has made no effort to assert a similar claim. RSC now moves
13 to strike Lexington's entire complaint or its claim for unjust
14 enrichment. (doc. #357)

15 STANDARD

16 Rule 12(f) of the Federal Rules of Civil Procedure states that
17 a district court "may strike from a pleading an insufficient
18 defense or any redundant, immaterial, impertinent, or scandalous
19 matter." "The function of a 12(f) motion to strike is to avoid the
20 expenditure of time and money that must arise from litigating
21 spurious issues by dispensing with those issues prior to trial[.]"
22 Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993)
23 (quotation marks, citation, and first alteration omitted), rev'd on
24 other grounds by Fogerty v. Fantasy, Inc., 510 U.S. 517 (1994).
25 Granting a motion to strike is within the broad discretion of the
26 district court. Stanbury Law Firm v. IRS, 221 F.3d 1059, 1063 (9th
27 Cir. 2000). However, "Rule 12(f) does not authorize district
28 courts to strike claims for damages on the ground that such claims

1 are precluded as a matter of law." Whittlestone, Inc. v.
2 Handi-Craft Co., 618 F.3d 970, 974-75 (9th Cir. 2010).

3 DISCUSSION

4 Motion to Strike

5 RSC advances two arguments for why the court should strike
6 Lexington's Complaint and its second claim for unjust enrichment.
7 First, it argues that Lexington's Complaint has no legal effect
8 because there can only be one operative complaint at a time in any
9 one case. RSC, however, cites no legal authority for this
10 assertion, nor has this court found any authority so holding.

11 Second, RSC argues that Lexington is really trying to amend
12 its complaint to add a new claim in violation of Fed. R. Civ. P.
13 15(a)(2), and that even if the court were to allow amendment, it
14 would be futile. This argument, however, is not well taken since
15 Lexington cannot amend a complaint that it never filed in the first
16 place.

17 The substance of RSC's motion to strike focuses on elimination
18 of the unjust enrichment claim for damages on the basis that the
19 claim fails as a matter of law. The Ninth Circuit, however, has
20 recently held that "a party may [not] seek dismissal of a pleading
21 under Rule 12(f)," and that the rule "does not authorize district
22 courts to strike claims for damages on the grounds that such claims
23 are precluded as a matter of law." Whittlestone, 618 F.3d at 974-
24 75.

25 Defendant argues orally it is unfair to allow a new claim
26 after discovery closes. It argues it wants discovery about the
27 alleged benefit conferred, but identifies no discovery in this
28 regard not already in its grasp, nor any facts in dispute.

1 Last, defendant argues it is unfair to allow this complaint as
2 a way to avoid defendant's summary judgment motion. That motion (#
3 317) is, however, denied on other grounds.

4 RSC's motion to strike, therefore, is an inappropriate vehicle
5 to challenge Lexington's claim for unjust enrichment on the grounds
6 asserted. Accordingly, RSC's motion is denied.

7 **CONCLUSION**

8 Defendant's Motion to Strike Lexington's Complaint [doc. #
9 357] is denied.

10 IT IS SO ORDERED,

11
12 Dated this 10th day of December, 2010.

13 /s/ Dennis J. Hubel

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Dennis James Hubel
United States Magistrate Judge